



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0460]

RIN 1625-AA00

Safety Zone; San Juan Harbor, San Juan, PR

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is adjusting an existing moving safety zone for San Juan Harbor, San Juan, Puerto Rico. This action is necessary to better meet the safety and security needs of San Juan Harbor. This regulation would continue to prohibit persons and vessels from entering the safety zone, unless authorized by the Captain of the Port San Juan or a designated representative.

DATES: This rule is effective [INSERT 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0460 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Pedro Mendoza, Sector San Juan Prevention

Department, Waterways Management Division, U.S. Coast Guard; telephone 787-729-2374, email Pedro.L.Mendoza@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
LG	Liquefied Gas
LNG	Liquefied Natural Gas
LPG	Liquefied Petroleum Gas
NPRM	Notice of proposed rulemaking
§	Section
TFR	Temporary Final Rule
U.S.C.	United States Code

II. Background Information and Regulatory History

The existing regulation in 33 CFR 165.754, contains a moving safety zone around transiting liquefied petroleum gas (LPG) carriers en route to, or departing from, the Gulf Refinery Oil dock or the Cataño Oil dock. On December 12, 2017, the Coast Guard received a request to assess the waterway suitability of transiting and semi-permanently moored liquefied natural gas (LNG) carriers within the San Juan Harbor. On September 26, 2018, the Coast Guard determined the Port of San Juan could accommodate the safe navigation and mooring of LNG carriers within the San Juan Harbor. On July 18, 2019, a Notice was published in the Federal Register (84 FR 34323) announcing two public meetings would be held on July 26, 2019 by the Coast Guard and New Fortress Energy to receive comments regarding the safe navigation and mooring of LNG carriers through the San Juan Harbor. There were approximately 50 attendees at the public meetings.

Approximately 20 attendees submitted written and verbal questions¹. In addition, we received five written comments in response to the Notice². These comments are addressed below.

While the Coast Guard completed the rulemaking process for revising the existing safety zone regulation contained in § 165.754, we published two temporary final rules (TFR) in the Federal Register under USCG-2019-0686, and both entitled “Safety Zone; San Juan Harbor, San Juan, PR.” These TFRs established temporary safety zones for navigable waters within an area of one half mile around each LNG carrier or LPG carrier (collectively referred to as Liquid Gas (LG) carriers) entering and departing San Juan Harbor. The TFRs also established a 50-yard radius around each vessel when moored at the Puma Energy dock, Cataño Oil dock, or Wharf B. The first TFR was published on September 13, 2019 (see 84 FR 48278), and was effective from August 23, 2019 until November 15, 2019. The second TFR was published on October 31, 2019 (84 FR 59726), and was effective until February 28, 2020.

On December 17, 2019, a notice of proposed rulemaking (NPRM) entitled, “Safety Zone; San Juan Harbor, San Juan, PR” was published in the Federal Register under USCG-2019-0460 (84 FR 68860) with a 30 day comment period. The comment period ended on January 16, 2020. No comments were submitted during the NPRMs 30 day comment period.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). Due to their cargoes, size, draft, and the local channel

¹ See document titled “Summary of Public Meetings Held in July 26, 2019 Regarding Regulatory Docket USCG-2019-0460.”

² These comments are available at: <https://www.regulations.gov> under docket number USCG-2019-0460.

restrictions, LNG carriers must use of the center of navigation channels for safe transit. The COTP San Juan has determined that potential hazards associated with LNG carriers would be a safety concern for anyone within an area of one half mile during their transit and a 50-yard radius while moored. The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within one half mile during the transit of LG carriers through San Juan Harbor and a 50-yard radius while the LG carriers are moored at Puma Energy dock, Cataño Oil dock, or Wharf B. This rule will safeguard vessels at an adjacent berthing location, Puerto Nuevo Berth B, which supplies LNG to the Puerto Rico Electric Power Authority (PREPA) and other industrial sectors.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received five written submissions in response to the public meetings that were held on July 26, 2019. A discussion of the comments and responses follows.

Three commenters raised questions about the frequency of LNG carriers and if there would be any limitations in place. Although, these questions are outside of the scope of this proposed rulemaking, New Fortress Energy advised they anticipate one LNG carrier to arrive every three days and that each ship-to-ship transfer would take around 18 hours. The gas would then be loaded to trucks to be delivered to another primary or secondary power source. The rule does not set a limit on the number of LNG carriers/ships that will be allowed to transit through the bay. Also, the rule does not set limit on the time the LNG carrier/ship will be moored in the docks/wharfs.

Three commenters asked questions specific about the facility's operations that may affect neighboring waterfront facilities. These comments are outside of the scope of

this rule, which is specific to the adjustment of the existing San Juan Harbor Safety Zone (33 CFR 165.754).

One commenter asked about safety concerns and whether safety precautions would be established to mitigate these concerns. New Fortress Energy will be required to meet all the regulations in 33 CFR part 127 Subparts A and B for Waterfront Facilities Handling Liquefied Natural Gas and Liquefied Hazardous Gas.

Four commenters raised concerns about the lack of access to information about the proposed LNG safety zone impeded meaningful public participation in the administrative proceeding and the due process that the Coast Guard must afford the citizenry, particularly residents who live within the potential impact zone of the proposed LNG operation. The commenters required access to the file, including the Letter of Intent (LOI), Water Suitability Assessment (WSA) and Report, and other documents. Prior to the public meetings that were held on July 26, 2019, the NPRM for the adjustments to the existing San Juan Harbor Safety Zone in § 165.754 were still under review. Comments collected at the July 26, 2019 meetings were used to make further revisions to the NPRM that was eventually published in the Federal Register on December 17, 2019. The LOI, WSA, and other documents contain business and security sensitive information and would need to be requested through the Freedom of Information Act (FOIA). FOIA requests may be submitted via electronic mail to: EFOIA@uscg.mil or in writing via mail or overnight carrier to: Commandant (CG-611), ATTN FOIA Officer, US Coast Guard Stop 7710, 2703 Martin Luther King Jr Ave SE, Washington DC 20593-7710.

Two commenters raised concerns about community awareness regarding the construction of the new LNG facility. Although this comment is outside of the scope of this rulemaking, the adjacent regulated waterfront facilities were made aware of the new facility prior to its construction.

Two commenters asked questions about the rulemaking process and if customary procedures were followed. The rulemaking process can vary and in this case the NPRM was made available to the public on December 17, 2019. Comments received at the public meetings were used to finalize the regulatory text contained in the NPRM. Public participation for the NPRM rule was collected through the public meetings and through a 30 day comment period once the NPRM was published. No additional comments were submitted during the NPRM's comment period.

Three commenters asked if there would be additional public hearings after the hearings that were held on July 26, 2019. On July 26, 2019, we hosted two public meetings alongside New Fortress Energy in San Juan, PR. Approximately 50 attendees were present and approximately 20 attendees had questions that were addressed at the public meeting. Although protests were occurring around that time, we do not believe they had any impact on attendance at the meetings. Prior to the public meetings, the NPRM for the adjustments to the San Juan Harbor Safety Zone was still under review. Comments collected at the July 26, 2019 meeting were used to develop the NPRM. We also provided a 30 day comment period on the proposed rule; however no additional comments were received. Therefore, we have decided to not schedule any additional hearings regarding this rulemaking.

Two commenters asked about potential changes in operations of the bay. The new LNG facility at Wharf B expects to receive one carrier every three days with ship-to-ship transfer operations lasting approximately 18 hours in duration. We do not anticipate this would significantly affect current port operations or navigation. Neighboring facilities would be able to safely continue operations when an Liquefied Gas (LG) carrier is transiting, moored, or engaged in transfer operations.

One commenter asked about the project cost. This question was outside of the scope of this rulemaking.

One commenter asked if any environmental assessments or impact statements were completed. A preliminary environmental assessment was conducted during the NPRM stage³. We have also completed a final environmental record of environmental consideration for the final rule, which is available to the public⁴.

Two commenters asked if there were other LNG facilities requesting safety zones. The Coast Guard has not received any other requests from LNG facilities for the creation of new safety zones associated with their operations.

There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these

³ See Preliminary Record of Environmental Consideration in the NPRMs supporting docket folder at: <https://www.regulations.gov/document?D=USCG-2019-0460-0008>.

⁴ The final Record of Environmental Consideration is available at: <https://www.regulations.gov/docket?D=USCG-2019-0460>.

statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, available exceptions to the enforcement of the safety zone, and notice to mariners. The regulated area will impact small designated areas of navigable channels within San Juan Harbor. The rule will allow vessels to seek permission to enter, transit through, anchor in, or remain within the safety zone. Additionally, notifications to the marine community will be made through Local Notice to Mariners, Broadcast Notice to Mariners via VHF-FM marine channel 16, and on-scene representatives. The notifications will allow the public to plan operations around the affected areas.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast

Guard did not receive any comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have

determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves involves a safety zone that would establish a 50-yard radius around transiting and moored liquefied gas carriers. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.754 to read as follows:

§ 165.754 Safety Zone; San Juan Harbor, San Juan, PR.

(a) *Regulated area.* A moving safety zone is established in the following area:

- (1) The waters around liquefied gas (LG) carriers entering San Juan Harbor in an area one half mile around each vessel, beginning one mile north of the Bahia de San Juan Lighted Buoy #3, in approximate position 18°28'17.8"N, 066°07'36.4"W and continuing until the vessel is moored at the Puma Energy dock, Cataño Oil dock, or Wharf B in approximate position 18°25'47"N, 066°6'32"W. All coordinates are North American Datum 1983.
 - (2) The waters around LG carriers in a 50-yard radius around each vessel when moored at the Puma Energy dock, Cataño Oil dock, or Wharf B.
 - (3) The waters around LG carriers departing San Juan Harbor in an area one half mile around each vessel beginning at the Puma Energy Dock, Cataño Oil dock, or Wharf B in approximate position 18°25'47"N, 066°6'32"W when the vessel gets underway, and continuing until the stern passes the Bahia de San Juan Lighted Buoy #3, in approximate position 18°28'17.8"N, 066°07'36.4"W. All coordinates referenced use datum: NAD 83.
- (b) *Regulations.* (1) No person or vessel may enter, transit or remain in the safety zone unless authorized by the Captain of the Port (COTP), San Juan, Puerto Rico, or a designated Coast Guard commissioned, warrant, or petty officer. Those operating in the safety zone with the COTP's authorization must comply with all lawful orders or directions given to them by the COTP or his designated representative.

- (2) Persons desiring to transit the area of the safety zones may contact the COTP San Juan or his designated representative to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the COTP or his designated representative.
- (3) Vessels encountering emergencies, which require transit through the moving safety zone, should contact the Coast Guard patrol craft or Duty Officer on VHF Channel 16. In the event of an emergency, the Coast Guard patrol craft may authorize a vessel to transit through the safety zone with a Coast Guard designated escort.
- (4) The Captain of the Port and the Duty Officer at Sector San Juan, Puerto Rico, can be contacted at telephone number 787-289-2041. The Coast Guard Patrol Commander enforcing the safety zone can be contacted on VHF-FM channels 16 and 22A.
- (5) Coast Guard Sector San Juan will, when necessary and practicable, notify the maritime community of periods during which the safety zones will be in effect by providing advance notice of scheduled arrivals and departure of liquefied gas carriers via a Marine Broadcast Notice to Mariners.
- (6) All persons and vessels must comply with the instructions of on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, or petty officers of the U.S. Coast Guard. Coast Guard Auxiliary and local or state officials may be present to inform vessel operators of the requirements of this section, and other applicable laws.

Dated: March 13, 2020.

E. P. KING,

Captain, U.S. Coast Guard,

Captain of the Port San Juan.

[FR Doc. 2020-05693 Filed: 3/18/2020 8:45 am; Publication Date: 3/19/2020]